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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: SEP 13 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and stepchildren.

The acting immigration attaché found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the Acting Immigration Attaché,* dated March 8, 2004.

On appeal, the applicant asserts that additional information exists to demonstrate hardship to the applicant's spouse and family. *Form I-290B*, dated March 16, 2004.

In support of these assertions, the applicant submits a letter from a therapist treating the applicant's stepdaughter, dated March 23, 2004; a letter from the applicant's spouse, undated; a letter from the supervisor of the applicant's spouse, undated and a letter from a former employer of the applicant, dated March 19, 2004. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on or about February 27, 2001 with a valid C1 visa to transit to Cuba. The applicant failed to abide by the regulations established for the visa and was granted voluntary departure by an immigration judge; he arrived in the Philippines prior to the deadline of March 19, 2003. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The applicant's spouse asserts that she suffers financial hardship as a result of separation from the applicant. The applicant's spouse indicates that prior to her marriage to the applicant, she and her children were on "Medicaid, WIC, and food stamps." *Letter from Tammy Cabuenas*. The applicant's spouse contends that she is unable to afford an apartment in the absence of the applicant and is forced to live with her parents. The applicant's spouse states that her expenses equal her income. *First Letter from Tammy Cabuenas*. The AAO notes that the expenses listed by the applicant's spouse list two car payments totaling over $500 monthly. The record does not establish why the applicant's spouse, in the absence of the applicant, requires the use of two automobiles. The record further fails to establish that the expenses listed are not discretionary. The AAO recognizes that living with her parents may impose hardship on the applicant's spouse, however, her assertion, "if my parents were to become disabled or pass away, I would not have anywhere to live," does not form the basis of a finding of extreme hardship where the record fails to establish that the parents of the applicant's spouse are in failing health or in danger of becoming disabled. *Id.*

The applicant's spouse contends that her work has suffered as a result of the applicant's absence. *Letter from Tammy Cabuenas*. She indicates that her position is in jeopardy as a result of her lack of concentration. The record also contains a letter from the manager overseeing the work performed by the applicant's spouse. *Letter from Joni McKee*. The AAO notes that the letter does not state that the employment of the applicant's spouse is in jeopardy. The letter reflects that the applicant's spouse struggles to remain positive in the absence of her husband and that the writer hopes that the applicant will return to the United States, however, it does not state that the applicant's spouse has received any notification that her employment may be compromised by the applicant's situation. *Id.*

Although the applicant's spouse makes generalized assertions regarding country conditions in the Philippines, she states that she and her daughters plan to move to the Philippines to be with the applicant. *Letter from Tammy Cabuenas*. The applicant's spouse states that such a move will be "difficult," but that her family is prepared to relocate to remain together for the duration of the applicant's inadmissibility. The AAO notes that the record is devoid of assertions regarding particularized hardship imposed on the applicant's spouse as a result of relocation to the Philippines.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.